APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/518,221	03/02/2000	Rick Fletcher	09764-74.10US	4794

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EXAMINER
ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

	Application No.		Applicant(s)
Office Action Summary	09/518,221		FLETCHER ET AL.
	Examiner		Art Unit
	David E. England		2143

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _28 April 2003_ .

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _16-20_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _16-20_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

1.   Claims 16 – 20 are presented for examination.

Claim Objections

1.   Claims 16 – 18 are objected to because of the following informalities: The term "prior art" is a term that

is not commonly used in claim language and makes a claim more susceptible to rejection because the claim is

not claiming anything novel and/or new that could be allowable. Appropriate correction is required.

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which
> the applicant regards as his invention.

2.   The term "etc." in claim 20 is a relative term which renders the claim indefinite. The term "etc." is not

defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one

of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

3.   Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term

"metrics" is not described in the specification in a way to have one of ordinary skill in the art to interpret the

term in a way to make the claim allowable.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.   Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Raab et al. U.S. Patent No. 6047321 (hereinafter Raab).

5.   Referencing claim 16, Raab teaches a method for distributed remote network monitor (dRMON) in a LAN comprising: deploying dRMON agents within ESs said agents implementing prior art RMON functional groups but only capturing and analyzing packets that their native ES sends or receives, (e.g. col. 4, lines 5 – 57); on a regular, periodic basis having the dRMON agents forward statistics and/or captured packets to a dRMON proxy or collector, existing somewhere on the WAN/LAN, (e.g. col. 4, lines 5 – 57); and combining received agent data thereby creating at the proxy the view that a prior, art stand-alone RMON probe would have if all the ES were on the same LAN segment with it, (e.g. col. 4, lines 5 – 57).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims 17 and 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab (6047321) in view of Dobbins et al. (5790546) (hereinafter Dobbins).

8.   As per claim 17 an understood by the Examiner, Raab does not specifically teach said proxy can mimic

the SNMP responses of a prior art non-distributed RMON probe so that existing network application

management software can interact with the proxy as though the proxy were a prior art probe. Dobbins teaches

said proxy can mimic the SNMP responses of a prior art non-distributed RMON probe so that existing network

application management software can interact with the proxy as though the proxy were a prior art probe, (e.g.

col. 16, lines 4 – 26). It would have been obvious to one skilled in the art at the time the invention was made to

combine Dobbins with Raab because it would be more efficient for a system to utilize the same functions that a

probe has and apply them to a proxy so have all functions of both devices in one device that could save time on

transmission time and prevent errors in transmissions to and from the proxy and probe. Furthermore, Applicant

discloses that this has been used in the prior art as stated in the claim itself.

9.   As per claim 18, as understood by the Examiner, Raab teaches all that is disclosed above but does not

specifically teach in an enhanced dRMON Managers a user is provided with the ability to combine ports and

hosts in order to create Virtual LAN (VLAN) definitions to cause the monitoring function to behave as though

all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON

collector in this embodiment creating and maintaining several such views with each appearing as one interface

to conventional RMON Management applications. Dobbins teaches in an enhanced dRMON Managers a user is

provided with the ability to combine ports and hosts in order to create Virtual LAN (VLAN) definitions to cause

the monitoring function to behave as though all selected hosts were on the same LAN segment being served by

the same RMON probe with the dRMON collector in this embodiment creating and maintaining several such

views with each appearing as one interface to conventional RMON Management applications, (e.g. col. 9, line

13 – col. 10, line 5 & col. 17, lines 28 – 67). It would have been obvious to one skilled in the art at the time the

invention was made to combine Dobbins with Raab because it would be more convenient for a system to utilize

the functions of VLAN's so a user in a specific user group does not have to be connected to a same segment as

the group to which it belongs to. Therefore allowing a new user and existing users the convenient of being

stationed anywhere in the system and allowing the system to perceive as though the user was on the same

segment.

10.   Claim19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab (6047321) in view of

Umetsu (5751963).

11.   As per claim 19, Raab does not specifically teach said agents perform continual response time

monitoring and forward the results to the Proxy. Umetsu teaches said agents perform continual response time

monitoring and forward the results to the Proxy, (e.g. col. 4, line 50 – col. 5, line 14). It would have been

obvious to one skilled in the art at the time the invention was made to combine Umetsu with Raab because it

would be more efficient for a system to have continual updates on network activity that could aid in the

efficiency of network data transferring in network peek times.

12.   Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab (6047321) in view of

Nugent (6076131) in further view of Engel et al. (6115393) (hereinafter Engel).

13.   As per claim 20, as understood by the Examiner, Raab does not specifically teach said agent software

utilizes native OS APIs to gather information about the ES that could not be via packet capture and analysis,

such as:

14.   (1) Network protocol stack configurations and NIC configurations including problematic situations;

15.   (2) Application information ranging from what protocols an application is bound to, to its manufacturer,

version, file date and time, DLLs used and their versions, etc.;

16.   (3) System information such as memory, CPU, disk space, current resource utilizations, etc.; and

17.   (4) System performance metrics. Nugent teaches said agent software utilizes native OS APIs to gather

information about the ES that could not be via packet capture and analysis, such as:

18.   (1) Network protocol stack configurations and NIC configurations including problematic situations, (e.g.

col. 9, lines 30 – 61). It would have been obvious to one skilled in the art at the time the invention was made to

combine Nugent with Raab because it would be more efficient for a system to analyze information that could

have errors in the system so to lower the probability of a system crashing or transmitting faulty information

across the network. Engel teaches

19.   (2) Application information ranging from what protocols an application is bound to, to its manufacturer,

version, file date and time, DLLs used and their versions, etc., (e.g. col. 14, lines 26 – 65);

20.   (3) System information such as memory, CPU, disk space, current resource utilizations, etc. , (e.g. col.

14, lines 26 – 65); and

21.   (4) System performance metrics, (e.g. col. 15, line 41 – col. 16, line 56). It would have been obvious to

one skilled in the art at the time the invention was made to combine Engel with the combine system of Raab and

Nugent because it would be more efficient for a system to gather as much information about a system and its ES

so if an error or an upgrade is needed it would be more convenient to find the system that require these fixes or

modifications.

Conclusion

22.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

23.   a.   Obenhuber et al. U.S. Patent No. 6144638 discloses Multi-tenant unit.

24.   b.   Desai et al. U.S. Patent No. 5781703 discloses Intelligent remote agent for computer

performance monitoring.

25.   c.   Doherty et al. U.S. Patent No. 6101170 discloses Secure fast packet switch having improved

memory utilization.

26.   d.   Ennis, Jr. et al. U.S. Patent No. 5867483 discloses Method and apparatus for measurement of

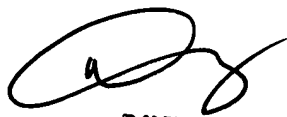peak throughput in packetized data networks.

Any inquiry concerning this communication or earlier communications from the examiner should be

directed to David E. England whose telephone number is 703-305-5333. The examiner can normally be

reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A.

Wiley can be reached on 703-308-5221. The fax phone numbers for the organization where this application or

proceeding is assigned are none for regular communications and none for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be

directed to the receptionist whose telephone number is none.

                                        David E. England
                                        Examiner
                                        Art Unit 2143

De _//_
May 4, 2003